MICHAEL FAILLACE & ASSOCIATES, P.C. Michael A. Faillace, Esq. [MF-8436] 110 East 59<sup>th</sup> Street, 32<sup>nd</sup> Floor New York, New York 10022 (212) 317-1200 *Attorneys for Plaintiffs* 

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ANGELO PENA, ROLANDO ROJAS, JOSE DIROCHE, and FRANKLIN SANTANA, individually and on behalf of others similarly situated,

Plaintiffs,

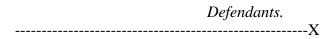
-against-

SP PAYROLL, INC., NICHOLAS PARKING, CORP., IVY PARKING, CORP., BIENVENIDO, LLC, CASTLE PARKING CORP., SAGE PARKING CORP., and SAM PODOLAK,

07 CV 7013

NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND COMPLAINT UNDER FED. R. CIV. P. 15(a)(2) AND FOR OTHER RELIEF

**ECF Case** 



PLEASE TAKE NOTICE that ANGELO PENA, ROLANDO ROJAS, JOSE DIROCHE, and FRANKLIN SANTANA (the "Named Plaintiffs"), *individually and on behalf of others similarly situated*, as well as eight prospective named plaintiffs CHRISTIAN SANTOS, LUIS RAMON LUNA, MIGUEL ALCANTARA, MIGUEL GARCIA, MIGUEL ROJAS, VICTOR GONZALES, JOSE DE ARCE REYES, and EDISON ALVAREZ (the "Prospective Named Plaintiffs") (collectively the "Plaintiffs"), hereby move through counsel, pursuant to FED. R. CIV. P. 15(a), to amend the Complaint in this action to *inter alia* (1) add the additional Prospective Named Plaintiffs (under Rule Fed. R. Civ. P. 21 and 15) (who are formerly "opt-in" plaintiffs under the proposed collective action), (2) conform the complaint to facts corrected

and/or obtained in deposition, (3) remove the request for certification of a collective action under

29 U.S.C. 216(b), and (4) file the annexed [Proposed] First Amended Complaint as Plaintiffs'

amended pleading in this matter.

PLEASE TAKE FURTHER NOTICE that Plaintiffs hereby move to amend the

caption in this matter to add the prospective named Plaintiffs, and remove mention of any

collective action under 29 U.S.C. 216(b).

PLEASE TAKE FURTHER NOTICE that Plaintiffs, in seeking amendment of the

Complaint, request relation back of the amendment under Fed. R. Civ. P. 15(c), and for all other

relief that this Court should deem just and appropriate under the circumstances.

In support of this motion, Plaintiffs file herewith the annexed (1) Affidavit of Michael

Faillace, Esq. in Support of Motion for Leave to Amend Complaint and For Other Relief, (2)

Memorandum of Law in Support of Motion for Leave to Amend Complaint and For Other Relief

(and attachments thereto), and (3) Affidavit of John Karol (attaching the [Proposed] First

Amended Complaint.

Dated: July 12, 2008.

Michael Faillace & Associates, P.C.

By:

Michael A. Faillace, Esq. [MF-8436] John A. Karol, Esq. [JK-9899]

110 East 59<sup>th</sup> Street, 32<sup>nd</sup> Floor

New York, New York 10022

(212) 317-1200

Attorneys for Plaintiffs

To: Peter Arnold Walker, Esq.

Seyfarth Shaw LLP 620 8th Avenue

New York, NY 10018

(212) 218-5570

Fax: (212) 218-5526

Email: pwalker@seyfarth.com

Attorneys for Defendants

2